

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COMPLEX SYSTEMS, INC.,

Plaintiff,

Civil Action No. 08-cv-7497 (KBF)
ECF CASE

v.

ABN AMRO BANK N.V.

Defendant.

-X

COMPLEX SYSTEMS INC.'S RULE 56 STATEMENT OF UNDISPUTED FACTS

Dated: April 26, 2013

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1. In or about November 1997, CSI licensed BankTrade to IT. (Ex. A)¹
2. The originally granted rights were altered via subsequent addendum agreements between CSI and IT, which allowed certain ABN entities to use BankTrade for its entire global trading platform. (Ex. B)
3. On or about April 22, 2007, ABN entered into a Purchase and Sale Agreement ("PSA") with BAC to sell certain of its subsidiaries for \$21 billion (The LaSalle Transaction) (Ex. D)
4. The BankTrade license remained with IT after the LaSalle Transaction. (Opinion, p. 17-18) (Ex. E)
5. In July of 2000, IT and CSI entered into another agreement, the Professional Services Agreement ("PRSA"), for CSI to provide additional software consulting services, including further modifications to the BankTrade software. (Kaplan Ex. 1)
6. The BankTrade license allowed IT to have modifications made to BankTrade, but also provided that "All applicable rights to patents, copyrights trademarks, and trade secrets in the System or any modification made at Licensee's request are and shall remain in Complex." (Ex. A, §9) (underlining added)

¹ Ex. ____ refers to the Kaplan Declaration dated August 23, 2012, already of record, at D.I. No. 173 filed under seal. A courtesy copy, with a full set of exhibits, has already been provided to the Court. Kaplan Ex. ____ refers to the Kaplan Declaration submitted herewith. For purposes of this motion, CSI refers to and incorporates by reference the evidence submitted in the above declarations.

7. The BankTrade license also contains a section titled Enhancements, which may have resulted in some added code, but that section also provides that such Enhancements are deemed part of the System, and thus, owned by CSI. (Ex. A, § 1, 9)

8. The BankTrade license provides that all copyrights in the System and modifications requested by Licensee would remain with CSI. (Ex. A, § 9)

9. Section 5.1 of the professional services agreement (“PRSA”) between CSI and IT relates to ownership of the additional modifications that may have been made under the PRSA, while section 5.2 of the PRSA specifies that the rights to the original BankTrade software is, and remains, the property of CSI, even if incorporated into the modifications made pursuant to the PRSA. (Kaplan Ex. 1)

10. In its 2009 summary judgment brief, ABN asserted the following

[T]he express language of the 1997 [BankTrade] License and the various amendments thereto granted authority to ABN to use and modify the BankTrade software. ABN in fact used and made substantial modifications to the BankTrade software, to which Plaintiff did not and could not object. (Underlining added) (ABN Br., July 22, 2009, filed under seal, D.I. 43, at p. 19)

11. The Amended Complaint claims ownership of the copyright, puts ABN on notice of its infringing conduct, and claims ABN is infringing the copyright. (Amended Complaint, D.I. 16. ¶¶ 1 – 56, and generally)

In addition to the above, CSI incorporates by reference its Rule 56 Statement of Undisputed Facts filed in connection with its previous summary judgment, D.I. 170.

Respectfully submitted,

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